Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

October Term, 1999

SEAN MILETTE,
Petitioner,

v.

SHELDON WHITEHOUSE,
ATTORNEY GENERAL
FOR THE STATE OF RHODE ISLAND,
Respondent,

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a Court permit a car search which is subsequent to a traffic stop when that search is prompted solely by the officer seeing presumptively protected First Amendment activity?

   Petitioner answers no.

2. May a States only Court of Appeals ratify such a search by only applying Fourth Amendment considerations and refuse to test such a search against the Requirements of the First Amendment?

   Petitioner answers no.

3. May a court accept into evidence and consider on appeal statements which indicate that certain presumptively protected First Amendment activity is evidence that a person belongs to a "subversive organization " without any testimony as to the truth of that statement?

   Petitioner answers no.

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PETITION FOR WRIT OF CERTIORARI

This petition appeals State vs. Sean Milette, Rhode Island Supreme Court Case No.
98-142 (P2/3025 AG)

OPINIONS BELOW

The date of the Rhode Island Supreme Court appealed from was April 13, 1999.

JURISDICTION

Jurisdiction is conferred upon this Court by virtue of the fact that this petition seeks Review of State Supreme Court ruling on the First Fourth Amendments of the United States Constitution.

STATEMENT OF CASE

There exists two starkly different versions of the arresting Trooper's description of the events leading up to the search complained of. This is because at trial, the Court ruled, in response to a Motion in Limine, that no mention was to be made of the swastika, pamphlets, and tattoos, which that Trooper saw and later seized, nor was

mention to be made of the associational conclusions which the Trooper made. A suppression hearing was not held until after conviction, when the Rhode Island Supreme Court on appeal, ordered that one be held. State vs. Sean Milette, 702 A. 2d 1165 (R.I. 1997). The references that follow, therefore, will be to the trial transcript, (Tr. Trans.) and the suppression-hearing transcript, (S.H. Trans.).

The trial transcript reveals that on August 2, 1995 at 10:55 A.M., Rhode Island State Police Trooper, James Manni, was on radar duty and clocked the Defendant, Sean Milette, driving 80 miles per hour on Route 295 South in a 55 mile per hour zone in Cranston, Rhode Island. (Tr. Trans. P. 64). The Defendant was carrying a passenger. (Tr. Trans. P. 65). The driver and passenger looked directly at the Trooper and then turned towards each other. (Tr. Trans. P. 64). The Trooper immediately

pulled out and activated his overhead lights. (Tr. Trans. P. 66). The Defendant immediately moved from the high-speed lane to the right hand travel lane. (Tr. Trans. P. 66). From a distance of eight to ten car lengths behind the Defendant's vehicle in the high-speed lane, the Trooper "saw, the movements; at first was I could see their heads facing each other, and appeared they had engaged in conversation; then I observed the passenger and operator dipping forward. It appeared that they were going to the glove box area." (Tr. Trans. P. 66-67). He was then asked to describe the actions of the driver and passenger separately. " I saw the passenger moving his shoulders forward bending down at least three times." (Tr. Trans. P. 67). Trooper Manni stated that he, "saw the driver leaning forward in almost a jerking motion, leaning forward and back up, forward and back up." (Tr. Trans. P. 67). The Trooper continued, " From my location, it appeared that

the movement was directed toward the seat area...either between the seat, middle of the seat, or under the seat." (Tr. Trans. P. 68). From the Trooper's location, he could not see if the passenger handed the driver anything, nor could he see any other movements between the Defendant and his passenger. (Tr. Trans. P. 68-69).

When the Defendant's vehicle stopped, the Trooper again observed the Defendant, "dipping his shoulders forward." (Tr. Trans. P. 69). "The driver then immediately put his arm, fully extended, out the window with what appeared to be his license." (Tr. Trans. P. 69). Upon inspection, it turned out to that the driver's license, registration, and insurance card had been retrieved by the driver. (Tr. Trans. P. 72). The Trooper did not call for back-up before he approached the Defendant's car. The Trooper stated that he approached the car on the passenger's side for the reason that, " once I observed the arm

outstretched, fully-extended leaning out towards the high way, that became a very unusual motion to me." (Tr. Trans. P. 71). He approached very slowly, touched the trunk, " to insure that the trunk was not popped, nothing going, come out of that trunk." (Tr. Trans. P. 71). "Looking in the rear window to make sure that there was no one hidden." (Tr. Trans. P. 72). When he reached the front seat area, he saw that the license, automobile registration, and proof of insurance had been retrieved. The Trooper saw the passenger's wallet had been taken out. (Tr. Trans. P. 72). He did not see the driver's wallet; apparently, it had been put away.

The next thing the Trooper did was to walk back to his cruiser and call headquarters for backup! (Tr. Trans. P. 72). When asked if this was standard procedure, he answered, " It is not standard procedure on just any car stop. If a Trooper fells he needs assistance, then he will

call. It is standard procedure at that time to call for an other car." (Tr. Trans. P. 72). When asked why he felt that he needed assistance the Trooper explained, " because of the movement in the vehicle, I feared for my safety going up to the vehicle at any other time." (Tr. Trans. P. 73).

The transcript of the suppression hearing tells another story. As the Trooper approached the car, he saw a large swastika, Nazi insignia, on the rear seat. (Tr. Trans. P. 14). The Trooper also saw, "Dozens and dozens of pamphlets regarding white supremacy information about having white babies, regarding Jewish groups, and Catholic groups, and there were dozens of miscellaneous ones, probably six to ten types, but there were packets of them as if they were going to be distributed somehow." (S. H. Trans. P. 15). The Trooper also saw a, "German tattoo of a German soldier" on the Defendant's back with some

German writing above it, which translated as, "Blood and Honor". (S. H. Trans. P. 18). A photograph of this tattoo, which was taken by the police while the Defendant was in custody, became State's Exhibit 1. (S. H. Trans. P. 18). On the Defendant's right shoulder, a tattoo, " depicting an iron cross and the word, 'skinhead', I believe said 1987." (S. H. Trans. P. 19). Two photographs of this tattoo, taken while the Defendant was in custody were entered as State's Exhibits 2 and 3. (S. H. Trans. P. 19). Tattoos on the Defendant's passenger's body which were not described on the record, but four photographs of which were taken by the police while Defendant's passenger was in custody were admitted a State's Exhibit 4. (S. H. Trans. P. 21).

The Trooper was formally employed by the United States Secret Service. (S. H. Trans. P. 3). As part of his training for that job, he took a course in Hate Groups re

lated to, " gangs, hate groups, white Supremist groups, stuff like that." (S. H. Trans. P. 4). It also encompassed the Klu Klux Klan and skinheads. (S. H. Trans. P. 6). During this course, he was taught that the trademarks of skinheads were a shaved head, numerous tattoos, iron cross tattoos, a tattoo of the word, 'skinhead', as well as tattoos of swastikas, German writing, German soldiers, pictures of devils and 'hate type words". (S. H. Trans. P. 6-7). The Trooper was taught that they usually dress to show off their tattoos. (S.H Trans. P. 7). The training he received was that skinheads were usually armed. (S. H. Trans. P. 8).

No evidence was presented as to the underlying truth of these received teachings. The Trooper testified to only one meeting with a skinhead, a man who was circulating a picture of President Reagan with rifle cross hairs on his forehead. He interviewed that man. He did not tes

tify that the man was armed. (S. H. Trans. P. 9). This Trooper worked on the Secret Service's Presidential and Vice-Presidential details. (S. H. Trans. P. 8, 10). The Trooper decided that the Defendant was a skinhead. (S. H. Trans. P. 22). The Trooper stated his conclusion in the following exchange at the suppression hearing:

Q. So, a person that has a shaven head, Nazi tattoos, is always known to be armed; is that correct?

A. Probability very high. If you can determine he is a skinhead, he is armed. (S. H. Trans. P. 28).

Trooper Manni called for backup. (Tr. Trans. P. 72). When back up, in the persons of two additional Troopers arrived, he told them of his intentions, which were, "my intentions were to determine if anything was concealed in the compartment of that vehicle." (Tr. Trans. P. 73). He then ordered the driver out of the vehicle, (Tr. Trans. P. 74). and had him stand facing the side of his

cruiser with his hand held at waist height and his fingers touching the cruiser. (S. H. Trans. P. 33). Trooper Manni ordered the passenger out and ordered him to assume the same position next to the Defendant. (S. H. Trans. P. 33).

They were watched over by the other two Troopers, Coleman and Takoian. (S. H. Trans. P. 33). Trooper Manni then went back to the vehicle. " I took my hat off, stuck my head inside the compartment and observed a weapon under the front seat. (Tr. Trans. P. 75). The transcript reveals that the passenger testified that he was patted down upon exiting the vehicle. (Tr. Trans. P. 178). The Defendant and the passenger were taken into custody. The swastika and pamphlets were seized. To the extent possible, the tattoos were seized. Photographs of each tattoo on the driver and passenger were taken at the police station.

Defendant/Petitioner filed a petition for Writ of Certiorari with the Rhode Island Supreme Court. That

Court, the State's only Appellate Court, did not grant Cer tiorari to appeal. Instead that Court, on its own motion, or-dered the parties to Show Cause why the matter should not be summarily decided without full briefs or full arguments (see attached opinion). After a Show Cause hearing, which allowed only limited briefs and limited arguments, the Court issued the opinion which is attached in the Appendix of this petition.

REASONS FOR GRANTING THE PETITION

Searches and seizures of items presumptively protected by the First Amendment must strictly comply with the Fourth Amendment. Maryland v. Macon, 472 U.S. 463, 468, 105 S. Ct. 2778, 2781, 86 L Ed. 2d 370 (1984), Stanford v. Texas, 379 U.S. 476, 485, 85 S. Ct. 506, 511, 13 L. Ed. 2d 431 (1965), State v. Tavone, 482 A. 2d 693 (R.I. 1984)., Pleasant v. Lovell, 876 F. 2d 787 (10th Cir.

1989). When First Amendment freedoms are involved, the First Amendment may justify greater protection than mere compliance with the Fourth Amendment. Gibson v. Florida Legislative Investigations Committee, 372 U.S. 539, 546, (see also Pleasant v. Lovell, Supra).

Maryland v. Macon, Stanford, v. Texas, and State v. Tavone, Supra, are all obscenity cases where a warrant was applied for prior to the search and seizure. In Pleasant v. Lovell, Supra, a civil suit was brought against the IRS for seizing a white supremacy group's membership lists without a warrant. Surely the standard can be no lower when a police officer seizes, without a warrant, pamphlets, a political symbol, and uses a person's associational choices an articulable reason to conduct a warrantless search for a weapon.

In Pleasant v. Lovell, Supra, which is the only case we have found which deals with a judicial determination

of a warrantless search directed at presumptively protected First Amendment activity, found that the way to approach this task was to first determine if the search "strictly complied" with the requirements of the Fourth Amendment, and if it did strictly comply, to then test the search against the potentially more rigorous First Amendment standards. Supra at 796.

Because this is not a full briefing of the case but is a brief to show this Court cause why this appeal should not be dismissed, Defendant takes liberty to lay out the issues in reverse order.

The First Amendment to the United States Constitution protects the associational rights of the people. Gibson v. Florida Legislative Investigation Committee, Ante. Louisianna Ex Rel. Gremillion v. NAACP, 366 U.S. 293; Shelton v. Tucker, 364 U.S. 479; Railroad Trainmen v. Virginia Bar, 377 U.S. 1. It protects political speech with

its broadest protection. Richmond Newspapers, Inc. v. Virginia, 100 S. Ct. 2814, 448 U.S. 555, 65 L. Ed 2d. 973; Mills v. State of Ala., 86 S. Ct. 1434, 384 U.S. 214, 16 L. Ed. 2d 484. It protects symbolic speech. Spence v. State of Washington, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842.

A tattoo may qualify as a symbolic speech. State Ex Rel Medical Licensing Board of Indiana v. Brady, 492 N. E. 2d 34. Government actions which burden core political speech are held to the "exact scrutiny" standard. McIntyre v. Ohio Elections Commission, 115 S.Ct. 1511,514 U.S. 334, 131 L.Ed. 2d 426.

The State of Rhode Island is free to argue that First Amendment rights should not carry the burden of warrantless car searches, but it has not done so. This Court could easily find that, because the State failed to present any evidence of the truth of the teachings of

Trooper Manni's course on "skinheads' that in this case, the State could never meet the heavy burden of proving that the First Amendment should be burdened. It could thereby, summarily, overturn this conviction. Likewise, on this transcript, this Court could decide that the trooper took principals of national security law enforcement and erroneously applied them to a situation where the life of the President was not involved.

There are also genuine issues of fact and law as to whether or not the Fourth Amendment of the United States Constitution permits the seizure of the weapon. The trial Court sought to justify the seizure on the basis of the plain view doctrine and cited; Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330 (1977); Maryland v. Wilson, _____U.S. _____, 117 S. Ct. 882 (1997); State v. Tavarez, 572 A. 2d 62 (R.I. 1995). Mimms, Supra, Wilson, Supra, and Soares, Supra, all stand for the propo-

sition that an officer conducting a traffic stop can choose to have his dealings with the driver or any passengers while they are outside of the vehicle, and that anything that comes into plain view as a result of this choice does not constitute a search. In Mimms, Supra, when the driver exited. the officer saw a large bulge under the driver's jacket. In Wilson, Supra, when the passenger exited the vehicle, crack cocaine fell from his clothing, In Soares, Supra, likewise, crack cocaine fell from the passenger's clothing. In the instant case, the troopers took physical control and custody of both the driver and the passenger and the arresting officer had begun his search of the car's passenger compartment.

Both Collodo, Supra, and Tavarez, Supra, although cited by the lower Court, do begin to illustrate how terribly off base the trial Courts decision was. In Collodo, Supra, this Court summed up. The line of pat

down cases that runs through United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981); Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2631, 61 L. Ed. 2d 357 (1979), Soares, Supra, and Tavares, Supra. This Court first reaffirmed that " the patting down of a person's outer garments in an attempt to find weapons is an " intrusion upon the sanctity of the person", and thus not to be taken lightly, Terry, 392 U.S. at 17, 88 S Ct. at 1877, 20 L. Ed. 2d at 903. It restated the countervailing consideration that might justify such an intrusion. "We concur with the reasoning of the United States Supreme Court in Mimms that the State's concern for the safety of the officers " is both legitimate and weighty". Mimms, 434 U.S. at 110, 98 S. Ct. at 33, 54 L. Ed. 2d at 336. An officer approaching a vehicle confronts an " inordinate risk", one study calculated that " approximately 30% of police shootings occurred when a police officer approached a suspect seated

in an automobile. Id. at 110, 98, S. Ct. at 333, 54 L. Ed. 2d at 336-37. It is our concern for the exposure of an officer to such danger that, we believe, justifies the de minimis intrusion incurred in a limited pat-down search for weapons, once the officer has reasonable concluded that the facts available at that moment would, " warrant a man of reasonable caution in the belief that the pat-down was justified. Id., at 112, 98 S. Ct. at 334, 54 L. Ed. 2d at 337". It then reaffirmed the two step test by which the Fourth Amendment tests the legitimacy of such an intrusion. " The United States Supreme Court expanded this so-called *Terry* doctrine in United States vs. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). In assessing whether a specific factual situation yields a " particularized suspicion", two elements must be present: First the assessment must be based upon all the circumstances. The analysis proceeds with various objective observa

tions; information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From the data, a trained officer draws inference and makes deductions -- inferences and deductions that might well elude an untrained person. The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Id. at 418, 101 S. Ct. at 695, 66 L. Ed. 2d at 629.

If a search did take place, this Court must decide if there is any legitimate basis for a search. In State v. Tavarez, Supra, this Court recognized that while furtive movements alone are not enough to justify a car search, State v. Dechene, 114 R.I. 276, 332 A. 2d 125 (1975), additional facts can "heighten the suspicious nature of De

fendant's movements", and justify a search. In Tavarez, Supra, there were movements described here. As here, the movements were made almost immediately after the officer activated the overhead lights. The movements which the officer noticed were, "the first movement had Defendant leaning forward toward the floor area in front of the driver's seat. The second movement involved the Defendant leaning sideways across the front passenger seat". Id. at 277. This Court noted that drivers often make such movements when retrieving their papers. When the officer approached the vehicle, he noticed that the Defendant had not retrieved his papers. This Court concluded that, "this served to dispel any innocent explanation for the furtive movements and to increase Trooper Rohans suspicions". Id at 278. In the instant case, the case the innocent explanation was bolstered.

The lower Courts reliance on Michigan v. Long, 463 U.S. 1032, 1049-1050, 103 S. Ct. 3469, 3481 (1983) is mis

placed. In Long, Supra, the officers saw the driver walking toward a large hunting knife before they restrained him and searched the rest of the car for other weapons.

Likewise, the Courts reliance on United States v. Sokolow, 490 U.S. 1, 109 S. Ct. 1581 (1989) and its progeny is ill taken. In those cases, the criminal profile which the officers relied upon was based on *behavior* and not presumptively protected First Amendment Rights.

It is up to this Court who holds the swastika.

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App. 1

OPINION OF THE RHODE ISLAND SUPREME COURT

No. 98-142-C.A.
(P2/95-3025 AG)

State of Rhode Island

v.

Sean E. Milette

Present: Weisberger, C. J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

OPINION

PER CURIAM. Last term in State v. Milette, 702 A.2d 1165 (R.I. 1997), we vacated the decision of the trial justice that the defendant, Sean E. Milette, (Milette) lacked standing to challenge the search of an automobile in which he had been driving at the time of a lawful traffic stop. On remand, we directed the trial justice to conduct a

suppression hearing in order to determine the admissibility of a handgun found as a result of this search. After an evidentiary hearing, the trial justice determined that the search of the automobile was lawfully conducted and Milette's conviction for unlawful possession of a pistol was allowed to stand. Milette now seeks appellate review of that determination. Following a pre-briefing conference, both parties were directed to appear and show cause why this appeal should not be summarily decided. After hearing the arguments of the parties and reviewing their memoranda, we are satisfied that cause has not been shown. Accordingly, we shall decide the merits of this appeal at this time. A brief recitation of the facts, as articulated in Milette, is necessary. On August 2, 1995, Milette was operating a black Ford Tempo in the southbound lane of Route 295 in Cranston, Rhode Island. As Milette proceeded southbound, Trooper James Manni

(Manni) of the Rhode Island State Police, observed the Ford Tempo traveling at a speed far in excess of the fifty-five mph hour posted speed limit. Manni immediately left his stationary radar post and followed the Ford Tempo a short distance before stopping the vehicle.

Manni would later testify that upon activating his emergency lights; he observed Milette and his passenger engage in furtive, movements. In particular, Manni "characterized" these movements as "dipping forward", "bending down", "leaning forward" in almost a jerking motion", and "leaning forward and back up, leaning forward and back up" Milette, 702 A. 2d at 1165.

In addition to these pre-stop observations, Manni testified that after stopping his cruiser behind the Ford Tempo, but prior to approaching the vehicle, he observed what appeared to be a quick exchange of words between Milette and his passenger, as well as additional movement

between the vehicle's occupants. According to Manni, as he approached the vehicle, (Milete) immediately put his arm fully extended out the window with what appeared to be his license." Alerted by this unusual gesture, which Manni interpreted as an attempt to keep him from looking inside the Ford Tempo, Manni approached the vehicle from the passenger's side. He thereupon observed both occupants leaning forward and looking out the operator's side window. Subsequently, upon request, Milette produced a valid driver's license, registration, and proof of insurance.

After obtaining identification from Milette and his passenger, Manni returned to his cruiser and called for backup. Upon the arrival of the additional police personnel, Manni ordered the occupants out of the vehicle and directed them to stand near the other officers who had recently arrived at the scene. Manni then removed his Stet

son, leaned inside the vehicle, and looked in the area where he had observed the occupant's furtive movements. According to the trial justice, "Manni did little more than bend down, cant his head slightly, and look under the driver's seat which (Milette) had left exposed." Thereafter, Manni observed a revolver barely "an inch away from the front edge of the seat" in the very area that Milette and his passenger were gesturing.

On remand, Manni testified that prior to joining the ranks of the Rhode Island State Police, he had served as a special agent in the United States Secret Service. Manni explained that as part of his training, he studied various gangs and hate groups, including white supremacist organizations. According to Manni's suppression testimony, skinhead organizations consist mostly of young white males with military backgrounds who exhibit certain trademarks to prove their allegiance. Manni added that these

trademarks generally include a variety of tattoos, such as a Nazi iron cross with the word "Skinhead" tattooed somewhere around the cross, "a Swastika tattooed on the body, also German writing, German soldiers, picture(s) of German soldiers, picture(s) of devils, and words various hate-type words." Manni also stated that according to his training and experience the presence of "spider web tattoos on a persons (sic) arms indicate that not only is the person a Skinhead but in all likelihood he (has) committed a violent act within the Skinheads."

Manni's training was particularly relevant in this case because, as he testified during the suppression hearing, his suspicions regarding this situation were aroused not only by the occupant's unusual movements, but also by their appearances. Manni stated that one of the first things he observed about Milette was a very large tattoo of a German soldier on his back with German writing above it, which,

according to Manni, translated into "Blood and Honor." The suppression evidence also revealed the presence of another tattoo on Milette's right shoulder, which consisted of an iron cross and the word "Skinhead," as well as a spider web tattoo on both arms indicating prior crimes of violence. Manni added that the passenger was also bare chested, and wearing shorts, which revealed the presence of numerous tattoos consistent with an allegiance to a skinhead organization. Finally, Manni testified that in his training and experience skinheads are usually armed. Indeed, as Manni stated, "if you can determine he is a Skinhead, (the probability is very high that) he is armed."

At the conclusion of the suppression hearing, the trial justice found that the revolver was discovered in plain view without any intrusive searching on the part of Trooper Manni. He declared that "no Fourth Amendment rights of the defendant were impacted" because "mere ob

servation, after all, does not constitute a search."

Alternatively, the trial justice determined that even if Manni's actions were to be characterized as a search of the vehicle, "it was nonetheless permissible as a precautionary, protective measure for officer safety." We agree with this later conclusion.

The decision of a trial justice upholding a warrantless search of an automobile based upon an articulable suspicion is a mixed question of law and fact, which obviously impacts upon a defendant's constitutional rights. Hence, this Court conducts a de novo review of the record to determine the existence or nonexistence of either probable cause to believe that a crime has been committed or reasonable suspicion that a suspect may be armed and dangerous. See Ornelas v. United States, 517 U.S. 690, 699,116 S. Ct. 1657, 1663, 134 L.Ed.2d 911, 920 (1996); State v. Rios, 702 A.2d 889, 889-90 (R.I. 1997); State v.

Campbell, 691 A.2d 564, 569 (R.I. 1997).

Milette challenges the trial justice's finding that Manni merely conducted a limited protective search of the automobile and argues that this search involved a more serious intrusion upon his privacy than previously sanctioned by this Court in State v. Aubin, 622 A.2d 444 (R.I. 1993), wherein the officer discovered a handgun by leaning into the vehicle with a flashlight while the driver searched the glove compartment . Moreover, Milette suggests that in formulating the articulable suspicion that the may have been armed, Manni considered improper factors, such as his physical appearance, which seemed to suggest an allegiance to a Neo-Nazi group, and his possession of white supremacist literature. As a result of these supposed improper considerations, Milette argues that his rights as protected by the First Amendment were impermissible impacted and therefore, rendered the search

unlawful. This Court has long recognized that a police officer may order the driver of a lawfully stopped motor vehicle to exit the vehicle for the purposes of verifying identification and to further the strong public interest in securing the safety of law enforcement officer. Aubin, 622 A. 2d at 445. See also Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L.Ed. 2d 41 (1997) (passengers); Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977) (drivers). Additionally, consistent with the Fourth Amendment, an officer may conduct a limited search of the automobile for weapons where the officer has an articulable suspicion to believe that the suspect may be armed and dangerous. Michigan v. Long, 463 U.S. 1032, 1051, 103 S. Ct. 3469, 3482, 77 L. Ed. 2d 1201, 1221 (1983). As we have stated previously, "the very great risk police officers encounter during routine traffic stops," coupled with "society's great interest in en

suring the safety of [the] police during such procedures," clearly justifies a search of the passenger compartment, albeit limited to those areas where a weapon may be hidden. State v. Tavarez, 572 A. 2d 2765, 278 (R.I. 1990). See also Long, 463 U.S. at 1048, 103 S. Ct. at 3480, 77 L. Ed. 2d at 1219.

Milette attempts to distinguish the search of this vehicle from the search allowed in Aubin by noting that since he and his passenger already had been ordered out of the vehicle prior to Manni's search, the " inherently dangerous situation" confronting the officer in Aubin was missing in this case. Aubin, 622 A. 2d at 446. Moreover, Milette insists that the instant search was illegal because its scope exceeded the mere inconvenience that we permitted in Aubin. We deem these arguments, however, to be without merit since the fact that the occupants have exited the vehicle and are subject to the control of the re

sponding police officers does not negate the exigency to search the vehicle for weapons. See Long, 463 U.S. at 1051, 103 S. Ct. at 3482, 77 L. Ed. 2d at 1221 (suspect may "break away from police control and retrieve a weapon from his automobile").

Consequently, the question of whether a protective search for weapons is permissible does not depend on the location of the vehicle's occupants or their relative freedom of movement, but rather, whether the officer possesses a reasonable belief based upon "specific and articulable facts which, taken together with the rational inferences from those facts, reasonable warrant' the officer in believing that the suspect is dangerous" and may have the present ability to obtain a weapon. Id. at 1049, 103 S. Ct. at 3481, 77 L. Ed. 2d at 1220. Therefore, our analysis rests upon the singular issue of whether, based upon the totality of the circumstances, a reasonable prudent officer

in similar circumstances would be warranted in concluding that a suspect may be armed and pose a threat to his or her safety. See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1869, 20 L. Ed. 2d 889 (1968).

The evidence adduced at trial and as augmented by Manni's testimony at the suppression hearing clearly demonstrated that Manni was confronted with two individuals who were engaged in furtive and suspicious behavior prior to and immediately following a lawful traffic stop. Both individuals were observed gesturing toward the floor and; furthermore, Milette, in an obvious attempt to prevent Manni from looking inside the vehicle, opened the driver's window and handed out his license, registration, and proof of insurance before Manni had even requested it. This unusual conduct amply justified Manni's suspicion about these individuals. Moreover, upon observing their appearances, Manni, mindful of his experience and

training pertaining to white supremacist groups, immediately concluded that there was a high probability that these individuals were armed. We are satisfied that the officer, having been confronted with these particular facts and observations, was justified in deciding to conduct a limited search of the vehicle in the precise area where the occupants had concentrated their previous attention. This limited search was a minimal intrusion upon Milette's privacy and did not violate his rights as guaranteed by the Fourth Amendment.

In addition to challenging the validity of the search on Fourth Amendment grounds, Milette also injects First Amendment principles into the analysis, arguing that Manni considered his political association and appearance in formulating an articulable suspicion that he may be armed and dangerous. Reduced to its essence, both Milette and the ACLU suggest that a search motivated by an officer's

awareness of a suspect's political beliefs, as well as an expression of those beliefs, is unlawful and; therefore, the fruit of the poisonous search should be suppressed. We reject this novel exposition on the breadth of the First Amendment and conclude that Milette's First Amendment rights, including his rights to freedom of expression and associations were not compromised merely because an experienced police officer utilized known law enforcement criteria to formulate an articulable suspicion. Police officers in the field are simply not required to weigh free speech or political correctness considerations in reaching either probable cause conclusions or in formulating an articulable suspicion that a suspect may be armed and dangerous. The suggestion that the search of the vehicle was motivated by Milette's political beliefs or an expression of his ideas is simply without merit.

The validity of any search must be tested by an ex-

amination of all the facts and circumstances available to the officer at the time of the search. " The analysis proceeds with various objective observations, [including] information from police reports ..... and consideration of the modes or patterns of operation of certain kinds of lawbreakers." United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 696, 66 L. Ed. 2d 621, 629 (1981). It has been long recognized that a trained officer may draw inferences and deductions from this information, "inferences and deductions that might well elude an untrained person." Id. See generally Florida v. Royer, 460 U.S. 491, 502, 103 S. Ct. 1319, 1326, 75 L. Ed. 2d 229, 239 (1983) (permitting the detainment of an individual whose appearance and conduct matched a drug courier profile).

In evaluating the conduct of an officer who is often confronted with split second decisions, trial justices are cognizant that this process

> "does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical

> people formulated certain common sense conclusion about human behavior; jurors as fact finders are permitted to do the same - - and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." Cortez, 449 U.S. at 418, 101 S. Ct. at 695, 66 L. Ed. 2d at 629.

Lastly, there must be a finding that the factors considered by a police officer reasonably give rise to " a suspicion that the particular individual being stopped is engaged in wrongdoing." Id. This approach involves an examination of the specific information available to the officer at the time he or she decides to act and falls squarely within the jurisprudence of the Fourth Amendment, without implicating any First Amendment considerations. It is well-settled that a criminal investigation is neither forbidden nor must it be curtailed when it interferes with a suspect's First Amendment freedoms. See United States v. Rubino, 727 F. 2d 786, 791

(9th Cir. 1983). "When activity protected by the First Amendment becomes the subject of a criminal investigation, the protections afforded by the Fourth Amendment come into play" and have been deemed to provide the necessary safeguards as mandated by the First Amendment. Id. A complete rendition of the facts and circumstances attendant to the decision to conduct a search for weapons, when properly scrutinized by the trial justice and subject to de novo appellate review, sufficiently safeguards First Amendment principles. See Zurcher v. Stanford Daily, 436 U.S. 547, 565, 98 S. Ct. 1970, 1981, 56 L. Ed. 2d 525, 541 (1978) (warrant requirement is merely required to be applied with "particular exactitude" when First Amendment interests may be endangered by a search).

This is not to say that evidence of an individual's association in a radical or subversive organization standing alone can justify a search and supply the requisite

probable cause to obtain a search warrant. See Rubio, 727 F. 2d at 794. However, an officer's actual knowledge of an organizational's political goals and modus operandi, including its penchant for illegal weapons, is a valid factor that an officer may consider, along with other articulable facts, in concluding that criminal activity may be afoot. In conclusion, we are satisfied that no First Amendment rights are compromised by the utilization of known facts about a terrorist or subversive organization, along with other objective criteria available to an experienced police officer in the field.

For these reasons, the Defendant's appeal is denied and dismissed. The judgement appealed from is affirmed and the papers in this case are remanded to the Superior Court.